Nixon Defense Strategy Is

By George Lardner Jr.
Washington Post Staff Writer

Between the lines of President Nixon's "defense book" on the Watergate scandal lies a carefully constructed effort to explain away his alleged complicity in the cover-up.

It can perhaps best be understood as a White House "rewrite" of the Watergate grand jury's criminal indictment in the case, and especially of the grand jury's allegations concerning the last $75,000 payment of "hush money" for Watergate conspirator E. Howard Hunt Jr. on the night of March 21, 1973.

The White House is plainly preoccupied with that episode and hopes to get the House impeachment inquiry wrapped up in it, too. The strategy of Mr. Nixon's lawyers is to emphasize the events of March 21 as the crucial test of the President's impeachability and thus divert members of the House Judiciary Committee from the standards that James Madison and other framers of the Constitution had in mind.

According to Madison, it was beyond dispute that the President should be subject to impeachment if he neglected to superintend the conduct of his subordinates "so as to check their excesses."

But Mr. Nixon's chief defense lawyer, James D. St. Clair, has been contending that only clear, unmistakable evidence of presidential criminality will do.

The Judiciary Committee has yet to make the choice. But by St. Clair's standard, the strongest charge against Mr. Nixon to surface so far —his apparent authoriztion of the hush money for Hunt —could also be the weakest.

The Watergate grand jurors charged that the payoff for Hunt stemmed from a March 21, 1973, meeting in the Oval Office at which Mr. Nixon declared at one point: "For Christ's sake, get it."

But despite the clearly damaging statements the President made at the session, his lawyers are flatly

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contending that nothing he said prompted the payment to Hunt.

Instead, according to Mr. Nixon's defense attorneys, John W. Dean III, then White House counsel, had already set the ball rolling before the President even knew of Hunt's demands.

The $75,000, the White House contends, was then delivered to Hunt's lawyer that night only because of the chain of events that Dean alone had set in motion.

The White House scenario has its weak points. Most of them are available in paperback—in the form of the White House transcripts. The March 21 meeting in the Oval Office is the most incriminating piece of evidence against Mr. Nixon to become public thus far.

The President's lawyers, however, are apparently confident they can explain it away, at least to the point of cutting off the Republican support for impeachment that is generally considered crucial.

The White House strategy hinges on three central questions that will get their test at closed hearings before the Judiciary Committee this week:

- When did Dean relay Hunt's demands over the telephone to Nixon campaign deputy Frederick C. LaRue?
- Did White House chief of staff H. R. (Bob) Haldeman tell former Attorney General John N. Mitchell—from whom LaRue took his orders—to approve the payment in light of what the President had said in the Oval Office?
- Did Mitchell then give LaRue the go-ahead because of what Haldeman had told him? Or was Mitchell using his own judgment when LaRue—as Dean had suggested —called him for advice?

Of those questions, the most important is what Haldeman and Mitchell talked about. Their telephone conversation took place at approximately 12:30 p.m. on March 21, 1973—just 35 minutes after the meeting of Haldeman, Dean and the President.

According to the Watergate grand jury, that phone call, like the White House meeting that indisputably prompted it, was the next overt act "in furtherance of the conspiracy"—the next step on the way to hushing up Howard Hunt.

The question may never

JAMES D. ST. CLAIR
. . . emphasizing phone call

to Stress March 21 Events

be settled in any firm fashion. If the indictment is correct, it may still be doubted that Haldeman or Mitchell would ever admit it. Their saying so could not only insure impeachment for Mr. Nixon, but prison terms for them.

St. Clair, then, would seem to be on safe grounds in asserting, as he has, that Haldeman simply invited Mitchell to come down to the White House the next day and that "during this conversation, there was no mention of meeting Hunt's demands. . ."

That leaves the other two questions, waiting to be put to Dean and LaRue this week. St. Clair has told the Judiciary Committee he "believes that Dean will confirm that he made the call to LaRue on the morning of March 21, 1973, before Dean met with the President."

LaRue then talked with Mitchell by phone later in the day, sometime "in the early afternoon," according to the Watergate grand jury. Why LaRue waited so long —apparently until after Mitchell had spoken with Haldeman—is not at all clear. But in any event, LaRue can be expected to testify that it was he who called Mitchell. "Mitchell," the White House emphasizes, "did not contact him."

That's it, at least from the White Houne point of view: Scratch the meeting in the Oval Office. Forget about the conversation between Haldeman and Mitchell.

What prompted the payment to Hunt, Mr. Nixon's lawyers contend, was simply Dean's call to LaRue, Dean's suggestion that LaRue contact Mitchell, and Mitchell's approving the payment "inasmuch as it was for attorney's fees."

The explanation is the most plausible the White House has offered so far although its plausibility is somewhat offset by the fact that it is far from the first to be offered.

At first, the President himself insisted last year that he had been told at the March 21 meeting only that money had been paid the original Watergate defendants "for attorneys' fees and family support, not that it had been paid to procure silence from the recipients."

Finally, a few days after the Watergate cover-up indictment was returned March 1, Mr. Nixon acknowledged having been told by Dean that hush money had been paid. A few days later, however, the President revised that to say it had simply been "alleged" by Dean that such payments were made.

Beyond that, the White House seems to have a decided penchant for overstating its case. St. Clair told the Judiciary Committee that the final page of the White House-expurgated transcript of the March 21 meeting "clearly demonstrates that the President recognizes that any blackmail and cover-up activities could not continue."

Actually, it demonstrates nothing except perhaps Mr. Nixon's desire—quite aside from the question of buying a respite from Hunt—for a new long-range strategy that would keep Watergate from "eating away" at the White House for another four years.

In addition, if Mr. Nixon had indeed rejected the thought of any more payments, it may fairly be asked why his aides had such deaf ears that they failed to have LaRue called off.

Dean had already talked with Mitchell the night before about Hunt's demands for $120,000. (LaRue's grand jury testimony indicates he came up with only $75,000 because he didn't have enough cash on hand.) The White House transcript of the March 21 meeting shows this exchange:

The President: "Just looking at the immediate problem, don't you think you have to handle Hunt's financial situation damn soon?"

Dean: "I think that is—I talked with Mitchell about that last night and—"

The President: "It seems to me we have to keep the cap on the bottle that much or we don't have any options."

Haldeman was not in the room at that point but moments after he entered, Mr. Nixon filled him in. ". . . His (Hunt's) price is pretty high, but at least we can buy time on that as I pointed out to John," the President told his chief of staff.

Despite all that, St. Clair contends the evidence now in the hands of the Judiciary Committee not only demonstrates that the grand jury's naming of Mr. Nixon as an unindicted co-conspirator in the Watergate cover-up was "unwarranted," but in fact "contradicts" such an allegation.

That, too, smacks of overstatement. But even so, the events of March 21, standing alone, are probably insufficient to carry impeachment the House floor and on to conviction in the Senate.

Instead, Judiciary Committee Chairman Peter Rodino (D-N.J.) and impeachment inquiry lawyers are reportedly considering a general article of impeachment stringing together a whole series of allegations — compiled from other investigations in addition to the Watergate scandal itself— that the President failed his constitutional obligation to "take care that the laws be faithfully executed."

That sounds more like James Madison, but it is not at all certain that his credentials will be good enough on the Republican side of the aisle.